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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

U.S. SMALL BUSINESS	)	NO. 07-03738
ADMINISTRATION, as Receiver for	)	
PROSPERO VENTURES, L.P.,	)	
	)	<b>DEFENDANT RAINBOW</b>
Plaintiff(s),	)	<b>ENTERPRISES L.P.'S RESPONSE</b>
	)	<b>TO COMPLAINT FOR BREACH</b>
v.	)	<b>OF PARTNERSHIP AGREEMENT</b>
	)	<b>AND DEMAND FOR TRIAL</b>
RAINBOW ENTERPRISES L.P.,	)	<b>BY JURY</b>
	)	
Defendant(s).	)	

Defendant Rainbow Enterprises L.P. responds to the numbered paragraphs of the  
Complaint as follows:

1. This paragraph sets forth conclusions of law to which no reply is necessary. To the extent this paragraph can be read as including factual allegations, those allegations are denied.
2. This paragraph sets forth conclusions of law to which no reply is necessary. To the extent this paragraph can be read as including factual allegations, those allegations are denied.
3. This paragraph sets forth conclusions of law to which no reply is necessary. To the extent this paragraph can be read as including factual allegations, those allegations are denied.

1 This paragraph alleges facts that are not within defendant's knowledge.

2 4. Defendant admits the first two sentences in this paragraph. The remainder of this  
3 paragraph sets forth conclusions of law to which no reply is necessary. To the extent this  
4 paragraph can be read as including factual allegations, those allegations are denied.

5 5. Admitted.

6 6. Admitted.

7 7. Admitted.

8 8. Defendant admits the dates and language in this paragraph, but states that the  
9 document speaks for itself.

10 9. Defendant admits the dates and language in this paragraph, but states that the  
11 document speaks for itself.

12 10. This paragraph sets forth conclusions of law to which no reply is necessary. To  
13 the extent this paragraph can be read as including factual allegations, those allegations are denied.

14 11. Defendant is without sufficient knowledge and information concerning the  
15 information contained in Prospero's books and records.

16 12. Admitted.

17 13. Admitted.

18 14. Defendant admits the dates and language in this paragraph, but states that the  
19 document speaks for itself.

20 15. Defendant incorporates his responses as set forth in Paragraphs 1 through 14  
21 above.

22 16. Denied.

23 17. Denied.

24 AFFIRMATIVE DEFENSES

25 FIRST AFFIRMATIVE DEFENSE

26 Plaintiff breached the Implied Covenant of Good Faith and Fair Dealing, by among other  
27 things, failing to provide Prospero an opportunity to cure.

1 SECOND AFFIRMATIVE DEFENSE

2 Plaintiff acted in bad faith and with unclean hands.

3 THIRD AFFIRMATIVE DEFENSE

4 Plaintiff is estopped from enforcing the contract because, among other reasons, it took  
5 actions and made statements that were relied on by Prospero and defendant to their detriment.

6 FOURTH AFFIRMATIVE DEFENSE

7 Plaintiff breached its fiduciary duties.

8 FIFTH AFFIRMATIVE DEFENSE

9 SBA regulations (13 C.F.R. § 107.500 et. seq.), which are incorporated into the contract  
10 and which were relied on by SBA, are invalid because they do not further the purpose of the  
11 SBIC statute (15 U.S.C. §§ 661-697g).

12 SIXTH AFFIRMATIVE DEFENSE

13 SBA regulations are vague, ambiguous and unenforceable under the due process clause of  
14 the United States Constitution.

15 SEVENTH AFFIRMATIVE DEFENSE

16 Plaintiff failed to mitigate its damages.

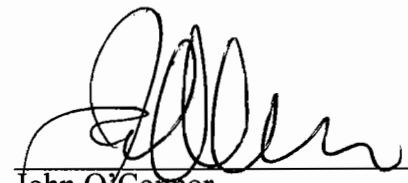
17 EIGHTH AFFIRMATIVE DEFENSE

18 Plaintiff's actions are ultra vires.

19  
20 Dated: October 18, 2007

O'CONNOR & ASSOCIATES

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22  
23 By:

  
\_\_\_\_\_  
John O'Connor  
Attorneys for Defendant,  
RAINBOW ENTERPRISES L.P.

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